

M. E. E. asks the Utah Labor Commission to review Administrative Law Judge George's denial of Mr. E.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. E. was injured on October 4, 2003, while roofing a personal residence being built by Jaime Alvarez. On October 20, 2003, Mr. E. filed an application for hearing to compel Mr. Alvarez and others to pay workers' compensation benefits for his injuries.¹

Judge Hann held an evidentiary hearing on Mr. E.'s claim on June 10, 2004, but resigned her position before issuing a decision. Mr. E.'s claim was reassigned to Judge George, who reviewed the record and, on December 13, 2004, issued his decision. Judge George concluded that Mr. Alvarez was not an "employer" within the meaning of the Utah Workers' Compensation Act and that Mr. E. was not an "employee," but was instead an independent contractor. Judge George further concluded that, for either of those reasons, Mr. E. was not within the coverage of the Act and was not entitled to benefits.

In his motion for review, Mr. E. contends that he was Mr. Alvarez's employee, rather than an independent contractor. Mr. E. also questions Judge George's ability to issue the decision in this matter in light of the fact that another ALJ conducted the hearing.

FINDINGS OF FACT

The Commission affirms and adopts Judge George's findings of fact.

DISCUSSION AND CONCLUSION OF LAW

Regarding Mr. E.'s challenge to the propriety of Judge George issuing the decision in this matter without having conducted the hearing, the Commission notes that § 63-46b-2(1)(h)(ii) of the Utah Administrative Procedures Act allows substitution of presiding officers in adjudicative proceedings "[i]f fairness to the parties is not compromised" Judge Hann's resignation from the Commission necessitated appointment of a substitute presiding officer in this case. As that substitute, Judge George had access to all evidence and argument that had been presented to Judge Hann. The Commission sees no reason to believe that substitution of Judge George for Judge Hann in any way compromised the fairness of this proceeding.

Mr. E. also contends that he was Mr. Alvarez's employee and was not an independent contractor. However, the preponderance of the evidence supports Judge George's conclusion that Mr. E. was free from Mr. Alvarez's direction and control with respect to the roofing project in question. The Commission therefore concurs with Judge George's judgment.

Even if the Commission were to conclude that Mr. E. was not an independent contractor, Mr. E. would remain ineligible for benefits because Mr. Alvarez is not an “employer” within the meaning of the Act. Mr. E. has not challenged that part of Judge George’s decision, which serves as an independent basis for denying Mr. E.’s claim.

ORDER

The Commission affirms Judge George’s decision and denies Mr. E.’s motion for review. It is so ordered.

Dated this 18th day of May, 2005.

R. Lee Ellertson, Commissioner

1. Mr. E. settled his claim against Granite Builders. Mr. E.’s remaining claims are against Mr. Alvarez and the Uninsured Employers’ Fund.